

LORBER, GREENFIELD & POLITO, LLP
 Louis W. Horowitz, Esq. [S.B. #020842]
 3930 E. Ray Road, Suite 260
 Phoenix, AZ 85044
 TEL: (602) 437-4177
 FAX: (602) 437-4180
lorowitz@lorberlaw.com

RENZULLI LAW FIRM LLP
 Christopher Renzulli, Esq. (*Pro Hac Vice*)
 Peter Malfa, Esq. (*Pro Hac Vice*)
 Jeffrey Malsch, Esq. (*Pro Hac Vice*)
 One North Broadway, Suite 1005
 White Plains, NY 10601
 TEL: (914) 285-0700
 FAX: (914) 285-1213
crenzulli@renzullilaw.com
pmalfa@renzullilaw.com
jmalsch@renzullilaw.com

*Attorneys for Defendants Diamondback Shooting Sports, Inc.,
 Loan Prairie, LLC d/b/a The Hub, SNG Tactical, LLC and Sprague's Sports, Inc.*

**IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA**

Estados Unidos Mexicanos,

Plaintiff,

vs.

Diamondback Shooting Sports, Inc., an
 Arizona corporation; SNG Tactical, LLC,
 an Arizona limited liability company;
 Loan Prairie, LLC D/B/A The Hub, an
 Arizona limited liability company; Ammo
 A-Z, LLC, an Arizona limited liability
 company; Sprague's Sports, Inc., an
 Arizona corporation,

Defendants.

Case No: 4:22-cv-00472-CKJ

**DEFENDANTS' MOTION TO STRIKE OR
 FOR LEAVE TO FILE JOINT RESPONSE TO
 PLAINTIFF'S NOTICE OF
 SUPPLEMENTAL AUTHORITY**

LORBER, GREENFIELD & POLITO, LLP
 13985 Stowe Drive, Poway, California 92064
 Telephone (858) 513-1020 / Facsimile (858) 513-1002

INTRODUCTION

On February 8, 2024, Mexico filed a Notice of Supplemental Authority based on a recent decision from the United States Court of Appeals for the First Circuit, *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, __ F.4th __, 2024 WL 227773 (1st Cir. Jan. 22, 2024). See ECF Doc. 44. Defendants hereby move the Court for an order striking Plaintiff's Notice of Supplemental Authority from the record. That Notice improperly seeks to present additional argument from Plaintiff about the issues addressed in Plaintiff's briefing on the issues raised by Defendants' Motions to Dismiss, not just a notice of new authority. Defendants object to Plaintiff's Notice of Supplemental Authority and request the Court strike it from the record.

If the Court decides to consider the additional arguments set forth in Plaintiff's Notice of Supplemental Authority and to consider the parties' positions on how this new opinion affects the arguments now before this Court, Defendants seek leave to file a Response to the arguments included in Plaintiff's Notice of Supplemental Authority. *See* Ex. 1 - Defendants' [proposed] Joint Response to Plaintiff's Notice of Supplemental Authority.

ARGUMENT

Plaintiff's Notice of Supplemental Authority improperly contains legal arguments in further support of its opposition to Defendants' Motion to Dismiss.

"There is no local rule or Federal Rule of Civil Procedure governing a Notice of Supplemental Authority. However, in this district, '[t]he purpose of a Notice of Supplemental Authority is to inform the Court of a newly decided case that is relevant to the dispute before it; it is not a venue for submission of additional argument or factual evidence.'" *Vega v. All My Sons Business Devp., LLC*, 583 F. Supp. 3d 1244, 1256 (D. Ariz. 2022) (quoting *Myers v.*

1 *Freed*, No. CV-19-05683-PHX-SMB, 2020 WL 6048327, at *1 (D. Ariz. Oct. 13, 2020); *see*
 2 *also Doe v. Blue Cross Blue Shield of Ill.*, 492 F. Supp. 3d 970, 980 (D. Ariz. 2020) (“Filing a
 3 notice of supplemental authority to inform the court of a new judicial opinion that has been
 4 issued is appropriate, but it is an improper occasion to argue outside the pleadings. If
 5 Defendant’s goal was to merely inform the Court of this decision, it accomplished that within
 6 the first sentence. Instead of stopping there, Defendant continued to explain and argue the case
 7 in detail. Such additional argument is inappropriate, and the court will not consider it.”); *B Street*
 8 *Grill & Bar LLC v. Cincinnati Ins. Co.*, 525 F. Supp. 3d 1008, 1013 (D. Ariz. 2021); *Hagens*
 9 *Berman Sobol Shapiro LLP v. Rubinstein*, No. C09–0894 RSM, 2009 WL 3459741 (W.D.
 10 Wash. Oct. 22, 2009) (notice of supplemental authority improper “because it contained
 11 argument regarding the case...”).

12
 13
 14
 15 In fact, this Court has faced a similar situation, and held, “[a]fter the motion to dismiss
 16 became fully briefed, Union Pacific filed a motion to submit supplemental authority and a notice
 17 of further supplemental authority. The court has considered the supplemental authority
 18 submitted . . . and the court will grant Union Pacific’s motion to submit supplemental authority
 19 to the extent the motion seeks to alert this Court to supplemental authority. However, the court
 20 declines to consider the substantive arguments set forth in the motion.” *Blankinship v. Union*
 21 *Pac. R.R. Co.*, CV-21-00072-TUC-RM, 2021 WL 3290453, at *1 n. 1 (D. Ariz. Aug. 2, 2021).

22
 23 Here, in the form of a chart, Plaintiff clearly asserts arguments beyond simply notifying
 24 the Court of the First Circuit’s decision in *Estados Unidos Mexicanos v. Smith & Wesson*
 25 *Brands, Inc.*, 2024 WL 227773 (1st Cir. Jan. 22, 2024). As such, this submission is improper
 26 and, at a minimum, the “chart” contained in ECF Doc. 44 should be stricken.
 27
 28

In the alternative, Defendants seek leave to file a Response to Plaintiffs' Notice of Supplemental Authority for the limited purpose of addressing the issues raised by Plaintiff related to the First Circuit's opinion. A copy of this proposed Response is attached hereto at Exhibit 1.

CONCLUSION

For the foregoing reasons, Defendants' motion to strike Plaintiff's Notice of Supplemental Authority, or, in the alternative, for leave allowing Defendants to file a Response, should be granted.

Dated: February 16, 2024

LORBER, GREENFIELD & POLITO, LLP

By: Louis W. Horowitz, Esq.
3930 E. Ray Road, Suite 260
Phoenix, AZ 85044
lhorowitz@lorberlaw.com

and

RENZULLI LAW FIRM LLP

By: /s/ Jeffrey Malsch
Christopher Renzulli, Esq. (*Pro Hac Vice*)
Peter Malfa, Esq. (*Pro Hac Vice*)
Jeffrey Malsch, Esq. (*Pro Hac Vice*)
One North Broadway, Suite 1005
White Plains, NY 10601
crenzulli@renzullilaw.com
pmalfa@renzullilaw.com
jmalsch@renzullilaw.com

*Attorneys for Defendants Diamondback
Shooting Sports, Inc., Loan Prairie, LLC
d/b/a The Hub, SNG Tactical, LLC and
Sprague's Sports, Inc.*

PISCIOTTI LALLIS ERDREICH

By: Anthony Pisciotto, Esq. (*Pro Hac Vice*)
Danny Lallis, Esq. (*Pro Hac Vice*)
Ryan Erdreich, Esq. (*Pro Hac Vice*)
30 Columbia Turnpike, Suite 205
Florham Park, NJ 07932
apisciotto@pisciotto.com
dlallis@pisciotto.com
rerdreich@pisciotto.com

and

WILSON, ELSE, MOSKOWITZ, EDELMAN
& DICKER LLP

By: Colt B. Dodrill, Esq.
Brian E. Cieniawski, Esq.
Arizona Bar No. 013185
2231 East Camelback Road, Suite 200
Phoenix, Arizona 85016
Colt.Dodrill@wilsonelser.com
Brian.Cieniawski@wilsonelser.com

Attorneys for Defendant Ammo A-Z, LLC

CERTIFICATE OF SERVICE

I, Jeffrey Malsch, hereby certify that this document was filed with the Clerk of the Court via CM/ECF. Those attorneys who are registered with the Court's electronic filing system may access this filing through the Court's CM/ECF system, and notice of this filing will be sent to these parties by operation of the Court's electronic filings system.

Dated: February 16, 2024

By: /s/ Jeffrey Malsch
Jeffrey Malsch
jmalsch@renzullilaw.com